

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

North American Electric Reliability Corp.

Docket No. RR07-13-000

ORDER CLARIFYING PROCEDURES

(Issued June 13, 2007)

1. In this order, the Commission clarifies that, in processing the eventual disposition of a self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard under section 39.7(b) of our regulations, 18 C.F.R. § 39.7(b) (2006), the North American Electric Reliability Corporation (NERC) shall also submit to the Commission any mitigation plans relevant to such disposition.

Background

2. On February 3, 2006, the Commission issued Order No. 672,¹ which implemented section 215 of the Federal Power Act (FPA).² Order No. 672 established criteria that an entity must satisfy to qualify to be the Electric Reliability Organization (ERO) that will develop and enforce Reliability Standards for the Bulk-Power System in the United States. The Commission certified NERC as the ERO on July 20, 2006.³

3. In Order No. 672, the Commission recognized that the ERO or a Regional Entity may become aware of a violation through compliance monitoring, periodic audits or self-reporting by the non-compliant entity, among other means. The Commission therefore

¹ *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, 71 FR 8,662 (February 17, 2006), FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, 71 FR 19,814 (April 18, 2006), FERC Stats. & Regs. ¶ 31,212 (2006).

² 16 U.S.C. 824o (2000).

³ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (*ERO Certification Order*), *order on reh'g & compliance*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030 (2007).

required the ERO and Regional Entities to have procedures to report an alleged violation to the Commission early on in the enforcement process. The Commission further provided that the ERO must promptly notify the Commission of a self-reported violation or an investigation into a violation or alleged violation.⁴ The Commission also required the ERO to file the eventual disposition of a self-reported violation or an investigation into a violation or alleged violation. We stated that this notification provision is intended as a mechanism to provide the Commission promptly with information to enable the Commission to understand the general nature of a violation or an alleged violation. Therefore, the Commission added section 39.7(b) to the Commission's regulations, which states:

The Electric Reliability Organization and each Regional Entity shall have procedures to report promptly to the Commission any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition.

4. In this order, the Commission clarifies our regulations regarding what must be submitted when the ERO informs us of a violation, including a self-reported violation.

Discussion

5. Where a user, owner or operator of the Bulk-Power System is found by NERC to be in noncompliance with a Reliability Standard, NERC's Rules of Procedure require that entity to submit to NERC for approval a mitigation plans with a timeline addressing how the noncompliance will be corrected.⁵ Such mitigation plans will be reviewed by the ERO.⁶ In NERC's 2007 implementation plan for its compliance monitoring and enforcement program, it explains how it will handle mitigation plans that are in place that pre-date the effective date of a Commission-approved Reliability Standard.⁷

6. The Commission supports NERC's process through which an entity may self-report a violation and propose a mitigation plan and believes that the responsibility to review such plans rests primarily on the ERO and Regional Entities. However, when the

⁴ Order No. 672 at P 582.

⁵ NERC Rules of Procedure § 404.2.

⁶ *Id.* § 403.10.4; 403.18.

⁷ See NERC, Compliance Monitoring and Enforcement Program: 2007 Implementation Plan, Attachment A at 3-4 (Apr. 18, 2007). Available at ftp://www.nerc.com/pub/sys/all_updl/docs/bot/Agenda-Items-0507/Item9-Attach1.pdf (2007 Enforcement Implementation Plan).

ERO reports to the Commission the eventual disposition of a self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard, it is important for the Commission to receive any ERO-approved mitigation plan to be implemented by the offending user, owner or operator of the Bulk-Power System in response to instances of noncompliance.⁸ Submission of these mitigation plans informs the Commission as to how the ERO and Regional Entities are implementing their compliance programs and enhances the Commission's overall ability to enforce section 215.

7. Therefore, the ERO is directed to submit mitigation plans relating to violations of mandatory Reliability Standards within seven business days of ERO approval. Further, the Commission understands that the ERO and the Regional Entities have received mitigation plans for violations of the currently voluntary Reliability Standards and that the period of mitigation in many instances extends beyond the date when the applicable Reliability Standards become mandatory.⁹ The ERO is directed to file such plans by July 1, 2007.

8. The submittal of all mitigation plans that cover any period of time after Reliability Standards become mandatory, whether entered into before or after the mandatory effective date of the Reliability Standards, is for information purposes, since neither section 215 of the FPA nor the Commission's regulations require Commission approval of a submitted mitigation plan. The Commission does not intend to notice such submissions or issue orders on each submission. Thus, once the ERO or Regional Entity approves a mitigation plan, the user, owner or operator must implement the mitigation notwithstanding the ERO's submission of the mitigation plan to the Commission. Nevertheless, the Commission does retain the ability to review a mitigation plan and take action under section 215 when appropriate, *e.g.*, where the Commission determines that a mitigation plan jeopardizes reliability by being substantively inadequate or allows an unreasonable period of time for an entity to come into compliance with the Reliability Standards.

9. The informational submissions required by this order will be treated as non-public information. As stated in Order No. 672, we view inquiries conducted by the ERO or a Regional Entity into alleged violations or self-reported violations as well as ERO or a Regional Entity monitoring and enforcement audit activities to determine whether

⁸ Note that this submission to the Commission is in addition to the prompt reporting required under section 39.7(b).

⁹ See, *e.g.*, 2007 Enforcement Implementation Plan, Attachment A at 4. The Reliability Standards already approved by the Commission become mandatory on June 18, 2007.

violations are occurring to be akin to our staff's Part 1b investigations. As a result, we concluded that these activities generally should be non-public and that there should be no right to intervene in them.¹⁰ Further, we stated that keeping these activities nonpublic would make it less likely that information relating to a system vulnerability would become public.¹¹ Similarly, the Commission believes that mitigation plans should remain non-public until section 39.7(b)(4) of the Commission's regulations permits or requires them to be made public.¹² Therefore, all mitigation plans submitted by the ERO will remain non-public unless the Commission has determined that public disclosure is appropriate.

The Commission orders:

(A) NERC is directed to submit any mitigation plans it has already approved by July 1, 2007.

(B) NERC is directed to submit any mitigation plans it approves in the future within seven business days of ERO approval.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ Order No. 672 at P 510.

¹¹ *Id.* at P 533.

¹² 18 C.F.R. § 39.7(b)(4) (2006).